IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K. HEMA

MONDAY, THE 5TH FEBRUARY 2007 / 16TH MAGHA 1928

RPFC. No. 34 of 2003

MC.144/2001 of Family Court, Kozhikode.
.....

REVISION PETITIONER/RESPONDENT:

M.C. ASHRAF, S/O. ABDUL KHADER HAJI,
AGED 36 YEARS, NEROTHINKAL HOUSE, KANNAPPANKUNDU,
MAYILELAM PARA P.O., PUTHUPPADY VIA.,
KOZHIKKODE TALUK.

BY ADV. SRI. A. MOHAMMED

RESPONDENT/PETITIONER AND STATE:
----

1. **PARAMBATH AISHA, D/O. MOIDU,**
   RESIDING AT KANNAPPAMKUNDU, MAILELLAMPARA P.O.,
   PUTHUPPADY AMSOM DESOM, KOZHIKKODE TALUK.

2. **STATE OF KERALA REPRESENTED BY THE**
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

   R1 BY ADV. SMT. P.A. REZIYA

THIS REV. PETITION (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 05/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. HEMA, J.

R.P. (F.C.) NO. 34 OF 2003

Dated this the 5th day of February, 2007.

O R D E R

The revision petitioner was directed to pay maintenance at the rate of Rs. 500/- to the respondent as monthly maintenance under Section 125 of the Code of Criminal Procedure, (Code, for short). This revision is filed against the said order.

2. According to the respondent, she was married by the petitioner and they lived together as husband and wife in husband's house. But, no children are born in the wedlock. The revision petitioner married one Razia and thereafter they are living separately. The revision petitioner has sufficient means and he has neglected to maintain the respondent, who is unable to maintain herself. On the above averments, respondent therefore prayed for an order to get monthly allowance at the rate of Rs. 500/- from the petitioner. The petitioner denied the marriage and all other allegations and averments made in the petition. He contended that the respondent had married another person Abdulla, S/o. Moidu and the said marriage is still existing. Therefore, the petitioner is not liable to maintain or pay any maintenance to her. The alleged marriage with Razia is also denied. The petitioner also denied that he is a driver and his income is Rs. 300/- per day.

3. To prove the respondent's case, PWs 1 to 5 were examined and Exhibits A1 and A2 were marked. The petitioner examined himself as RW1. The court below found on an analysis of the evidence and facts and

circumstances that the respondent proved that she was married to the petitioner, she was neglected though the petitioner is having sufficient means. Hence, the order was passed directing the petitioner to pay Rs. 500/- as monthly maintenance.

4. At the time of hearing, neither the revision petitioner nor the counsel were present. On going through the grounds stated in the revision petition, the main ground raised appears to be that the respondent failed to produce any document from the Mahal to prove the marriage. The contention appears to be that the non-production of such document would disprove the case of marriage. Another ground was raised that the amount fixed is exorbitant and that the evidence is misread by the trial court.

5. On going through the evidence and records, I find that PW1 examined as many as five witnesses including herself to prove the case. She examined PW2, the Khasi of the Mahal Committee attached to the mosque who issued Ext. A1 certificate. She gave evidence that the marriage was conducted as per the Muslim religious rites and it was conducted by PW2, the Khasi. This evidence is corroborated by the evidence of PW2 and Ext. A1. Ext. A1 was issued by the Khasi and he deposed that he had conducted the marriage between the parties. Though he was cross examined at length, there is absolutely no reason to discard his evidence. That apart, PWs 3 to 5 were also examined, who deposed that they had taken part in the marriage between the parties.

6. In addition to this, the respondent herein also marked Ext. A2, copy of the voter's list, which would show the respondent as an inmate of the house of the revision petitioner. Her name find place in the voter's list. As against this evidence, there is only a flat denial from the side of the revision petitioner. He examined himself as RW1. But, there is no explanation for the vital entries in the voter's list, Ext. A2. The only contention raised is that there would be documents in the Mahal Committee to prove that the marriage was conducted, and that such documents are not produced. In the light of Ext. A1 and the evidence of PW2 and other evidence adduced to support the case of PW1, I find that the non-production of any further document from the Mahal Committee is of no consequence and such non-production cannot lead to any adverse inference against the case set up by the respondent. As long as there is no material on record to discredit the testimony given by PW2, the Khasy, and Ext. A1 issued by him, the non-production of any document from the committee is of no consequence. The case set up by the petitioner that he had only acquaintance with the respondent while she was working as maid-servant in the neighbourhood etc. cannot be accepted in the light of the overwhelming evidence adduced on behalf of respondent herein.

7. On going through the evidence in detail and the judgment of the lower court, I find that the court has not misread the evidence as contended. The court has rightly concluded that the respondent is the legally-wedded wife of the revision petitioner. As per evidence, respondent is unable to

maintain herself and the petitioner is having sufficient means. He admittedly works as a coolie on contract. It cannot be said that he is a person without any means at all. Though the allegation that he is a driver has been denied by RW1, he admitted that he has light motor vehicle license.

Taking all these facts into consideration, I find that the quantum of maintenance awarded at Rs. 500/- per month is not excessive also. There is no ground to interfere with the findings and the order under challenge.

This revision petition is dismissed.

K. HEMA, JUDGE

smp